

Dear Clerk of Court

Regarding Adv. Case No. 23-04064

Enclosed please find my response in
opposition To Trustee's motion for
Summary Judgment.

RECEIVED BY MAIL

APR 15 2024

TIME: _____
CLERK, U.S. BANKRUPTCY COURT
ST. PAUL, MINNESOTA

C.C. Erick Algren

*Robert Landin's in Response
in opposition To Trustee motion
For Summary Judgment*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Steven Carl Landin

Case No. 23-41323

Debtor.

DEBTOR'S RESPONSE IN OPPOSITION TO TRUSTEE'S OBJECTION TO CLAIMED
EXEMPTIONS

- 1) Steven Carl Landin, "Debtor", submits this response in opposition to trustee's objection to claimed exemptions;
- 2) While trustee's objection states it is to "claimed exemptions" Debtor believes trustee's objection is limited to Debtor's claim of exemption under 11 U.S.C. Section 522(d)(5) of funds held by Debtor's brother in brother's account;
- 3) The material facts in this case are not in dispute;
- 4) Debtor filed Chapter 7 Bankruptcy on July 5, 2023;
- 5) On Schedule B, Debtor disclosed ownership of a Debit Card but no traditional bank account; Debtor also disclosed his brother was holding funds for Debtor. The actual disclosure on Schedule B states: "Brother's Bank account, storing funds for debtor (Source of funds is from debtor's 401k)";
- 6) On the Statement of Financial Affairs, debtor disclosed the following in number #18:

Debtor placed 401k distribution proceeds from a 401k debtor owns into brother's account for safekeeping; Debtor did this because debtor does not have a bank account. Brother holds the money for debtor only; it was not transferred to brother for brother's use;
- 7) Debtor's 341 meeting was held on August 10, 2023. Trustee's objection was filed on September 8, 2023;
- 8) Debtor owned and possessed a 401k with a market value of approximately \$12,426.55 on June 05, 2023. (See Exhibit A);

- 9) Of the \$12,426.55, Debtor took a 401k distribution of \$10,000.00 on or around June 5, 2023. (See Exhibit A);
- 10) Of the gross distribution of \$10,000.00, Debtor received a check for \$8000.00 after deducting Federal Taxes. (See Attached Exhibit A);
- 11) The check for \$8,000.00 was made payable to "Steven Landin" (Debtor). (See Exhibit B);
- 12) On or around June 20, 2023, Debtor, not having an account of his own, caused the check made payable to him to be deposited into his brother's account for safekeeping. (See Exhibit B);
- 13) Debtor's brother's bank records reflect the deposit of debtor's 401k money on June 20, 2023. (See Exhibit C);
- 14) Debtor's instructions to his brother is you are only holding my funds for purposes of making it available to Debtor so Debtor could pay his own personal expenses;
- 15) Debtor did not give brother any legal right to spend Debtor's money being held by Debtor's brother;
- 16) Section 541(a)(1) of the Bankruptcy Code states assets of the estate includes all of debtor's legal and equitable interests of debtor in property as of the commencement of the case;
- 17) Here, debtor held a legal and equitable interest in \$4,300.00 be held by brother for debtor;
- 18) While trustee does not bring an action to avoid a transfer under Section 548/550 of the Bankruptcy Code, Trustee seems to take the position debtor cannot exempt an asset Trustee asserts no longer belongs to Debtor because it was transferred to Debtor's brother;
- 19) In other words, Trustee argues Debtor's brother is in effect an "initial transferee" under Section 550(a)(1) of the Bankruptcy Code;
- 20) Unfortunately, the Bankruptcy Code does not define an "initial transferee";
- 21) The 8th Circuit has adopted the "Dominion and Control" test See Luker v. Reeves, 65 F.3d 670 (8th Cir. 1995) First Sec. Mtg. Co., 33 F.3d 42 (10th Cir. 1994) and In Re Coutee, 984 F.2d 138 (5th Cir. 1993);

- 22) The "Initial transferee" dominion and control test is purely concerned with rights; whether or not transferee may or may not have exercised control over the transferred funds is irrelevant. See *In re Blastin*, 260 B.R. 698, 717-718 (E.D. PA, 2001);
- 23) Here, Debtor's brother had no legal right to spend Debtor's money, to spend it for brother's own use; The right to put the money to one's own purposes is the definition of "Dominion and Control";
- 24) Here the only control brother exercised over the funds was the control delegated to brother by Debtor;
- 25) Simply put, Debtor's brother held the funds in a fiduciary capacity only. Brother was obligated to make the funds available upon Debtor's demand which brother in fact had done;
- 26) Here, brother held funds only for purposes of making the funds available to Debtor. Debtor's brother got no benefit from the funds at all;
- 27) Brother was in possession of transferred funds as a mere conduit between other parties in the transactional chain and is not a transferee within the scope of Section 550(a) of the Bankruptcy Code;
- 28) Unlike the cases cited by Trustee including *In re Corbin Lacina and Laura J. Lacina*, 451 B.R. 485 (Bankr. D. Minn. 2011), here debtor fully disclosed his brother holding onto his funds in the bankruptcy schedules and listed the placement of those funds with brother in the Statement of Financial Affairs. In addition, unlike Lacina, where at first debtor testified he denied the existence of a bank account and then later testified he did actually have a bank account, here Debtor does not have a bank account which is why the funds were placed in brother's account;
- 29) Trustee sent Debtor's attorney the Lacina case prior to filing the objection stating Trustee thought our case was similar to Lacina; Our facts are the polar opposite of Lacina;
- 30) Here, debtor's funds came from an exempt 401k distribution. The funds were placed in brother's account because debtor had no account and brother was simply holding funds only for purposes of making the funds available upon Debtor's demand;
- 31) Debtor retained ownership of the \$4,300 held in brother's account and is entitled to exempt this asset under 522(d)(5);
- 32) This court should respectfully overrule trustee's objection to debtor's funds in the amount of \$4,300.00 being held by debtor's brother.

Dated:

LIFE BACK LAW FIRM, P.A.

/e/ WESLEY W. SCOTT #0264787

Attorney for Debtor

13 7th Avenue South

St. Cloud, MN 56301

(320) 252-0330

wes@lifebacklaw.com

Verification

I, Steven Carl Landin, Debtor in this case, state and declare under penalty of perjury that the foregoing and supporting documents are true, correct, and accurate to the best of my knowledge, information and belief.

Dated: 10/06/2023

Steven Landin

Steven Carl Landin

DUININCK COMPANIES 401(K) PLAN

06/05/2023

01040 800000200661629

SP 01 004680 49888 H 6 ASNGLP



STEVEN C LANDIN
13351 CTY RD 9 NE
SPICER MN 56288

Questions? Call 800-890-4015 (TTY, 1-800-810-4015), business days (except NYSE holidays) from 8:30 a.m. - 8:00 p.m. or go to <http://helbenefits.401k.com>.

004580 1/1

Distribution Statement

Helpful To Know

- Review your transaction for accuracy, and report any discrepancies within 30 days.
- Remember to keep your account address up to date.
- Keep this stub (or report) until you receive your tax form next January.
- Retirement plan distributions may have tax consequences. You may want to consult a tax or financial professional.
- This distribution is from an employee benefit plan intended to be qualified under Internal Revenue Code section 401(a).

Distribution Summary

The following is a summary of a partial distribution processed from your account.

Beginning Balance	\$12,426.55
Less Withdrawal	(\$10,000.00)
Ending Balance	\$2,426.55

Tax Information

	Total
Total Distribution	\$10,000.00
Total Taxable Amount	\$10,000.00
Ordinary Income Amount	\$10,000.00

Check Information

Over →


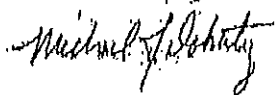

STEVEN C LANDIN Distribution Statement Request ID 800000289651629 Plan Number 01046

STEVEN LANDIN
13351 CTY RD 9 NE
SPICER MN 56288

Check Date:
Check Number:

06/06/2023

Gross Amount:	\$10,000.00
Federal Tax:	\$2,000.00
Net Amount:	\$8,000.00

<input type="checkbox"/> Verify this AUTHORITY SETTING. YOUR SECURITY DOCUMENT. <input type="checkbox"/> IN CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM LEFT TO RIGHT.	
	
DUNNICK COMPANIES 401K PLAN	
Fidelity Management Trust Company	
Check Number 00201342957	Account Number 81646
Date of Check June 5, 2023	
\$ 0,000.00	
Valid After 180 Days	
Eight Thousand Dollars And 00 Cents	
PAY TO THE ORDER OF:	STEVEN LANDIN, 13351 QTY RD 9 NE SPICER MN 56288
Deutsche Bank Trust Company Delaware	
	
Authorized Signature	
	
00590311	

CDP-60
ROY, 807
AMT



Kerrillville, MO 64629
320.264.2161
Albertville, MO 64501
763.424.0000

DEPOSIT

☒ CASH
(NO. UDHO' COIN)

DEPOSIT

DATE 6/20/23

NAME Robert Landon
RESPONDENT MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
ACCOUNT NUMBER

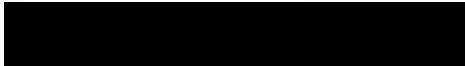
* 429 659

SUB TOTAL ▶

LESS CASH
RECEIVED ▶

NET
DEPOSIT \$

SIGN HERE FOR CASH RECEIVED (IF REQUIRED)



03

4000.00
103.00


8103.00


000207-001006402500002-00720/2023-14:34:29

THE WORD SECURE ABOVE WILL BECOME
VISIBLE WHEN HEAT ACTIVATED. HOLD
BETWEEN FINGERS OR RUB VIGOROUSLY.

32392796
ENCLOSURE
X *Robert Harding*
Pay To The Order of
Robert Harding
DEPOSITARY BANK ENDORSEMENT
DO NOT WRITE OR SIGN BELOW THIS LINE

35097

 **MN STATE USBC ASSOCIATION**
OPEN CHAMPIONSHIPS
27072 213th St
Plym MN 55304


 **HUSSEY FEDERAL CREDIT UNION**
MEMBER SINCE 1954 • 81001, MN 55120-1001
22-7599/2960

6/9/23

PAY TO THE ORDER OF Robert E. Landin \$ 103.00

One hundred and three and xx / 100 ***** DOLLARS

VOID AFTER 120 DAYS

 *Theresa A. Landin*
Samuel H. Landin

MEMO 2023 MN State USBC Open
Entry Number 398

Security Features: Details on Back

100 3

ENDORSE HERE

[Signature]

☐ CHECK HERE FOR MOBILE OR REMOTE DEPOSIT ONLY

AT _____ NAME OF FINANCIAL INSTITUTION _____ DATE _____

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

0002-06220/2023-14:34:20

<p><input checked="" type="checkbox"/> This security features listed below, as well as those not listed, extend uniformly throughout.</p>	
Security Features	<p>Hologram</p> <ul style="list-style-type: none"> Macro-embossed left side legend to check serial number Macro-embossed right side legend to check serial number Macro-embossed left side legend to check serial number Macro-embossed right side legend to check serial number <p>Heat Sensitive Ink</p> <ul style="list-style-type: none"> Heat sensitive ink on the front of the document Heat sensitive ink on the back of the document Heat sensitive ink on the left side of the document Heat sensitive ink on the right side of the document <p>True Watermark</p> <ul style="list-style-type: none"> Watermark on the front of the document Watermark on the back of the document Watermark on the left side of the document Watermark on the right side of the document <p>Zone Architecture Properties</p> <ul style="list-style-type: none"> Zone architecture properties on the front of the document Zone architecture properties on the back of the document Zone architecture properties on the left side of the document Zone architecture properties on the right side of the document <p>Chemically Sensitive Paper and Chemically Sensitive Ink</p> <ul style="list-style-type: none"> Chemically sensitive paper and ink on the front of the document Chemically sensitive paper and ink on the back of the document Chemically sensitive paper and ink on the left side of the document Chemically sensitive paper and ink on the right side of the document <p>Microprinting</p> <ul style="list-style-type: none"> Microprinting on the front of the document Microprinting on the back of the document Microprinting on the left side of the document Microprinting on the right side of the document <p>High Resolution Imaging System</p> <ul style="list-style-type: none"> High resolution imaging system on the front of the document High resolution imaging system on the back of the document High resolution imaging system on the left side of the document High resolution imaging system on the right side of the document <p>Anti Copy Technology</p> <ul style="list-style-type: none"> Anti copy technology on the front of the document Anti copy technology on the back of the document Anti copy technology on the left side of the document Anti copy technology on the right side of the document <p>Original Document Back Pattern</p> <ul style="list-style-type: none"> Original document back pattern on the front of the document Original document back pattern on the back of the document Original document back pattern on the left side of the document Original document back pattern on the right side of the document

ROBERT EUGENE LANDIN
DBA RJL TRANSFER
5341 75TH ST NW
PENNOCK MN 56279

Financial Security Bank has new options for your debit card!
Support your local school district with our NEW School
Spirit Debit Card, or choose one of our 5 new designs!
Please go to our website to check out your options.

STATEMENT PERIOD: 06/20/2023 - 08/10/2023

=====

15 08/00 12 CC

--- DEPOSITS AND MISCELLANEOUS TRANSACTIONS ---

Deposit		8,103.00+	06/20
Safe Box Debit	15.00-		06/30
Rent Payment For Safe Box; 169			

-- ELECTRONIC TRANSACTIONS --

DATE	AMOUNT	DESCRIPTION
06/22	10.39-	ACH Debit
		NewYorkLife-AARP [PPD] INSURANCE
06/26	2,185.00-	ACH Debit
		LifeBack Law Fir [WEB] Payment
06/27	81.81-	ACH Debit
		CARDMEMBER SERV [PPD] ELECT PYMT
06/30	78.28-	ACH Debit
		FUNERAL DIRECTOR [PPD] Insurance
07/03	4.10-	ACH Debit
		ECON800-832-6858 [PPD] JUL INS
07/03	113.00-	ACH Debit
		Kandiyohi Power [PPD] ACH Payment
07/05	3.60-	ACH Debit
		BLUETCROSS BLUESH [WEB] EDI PAYMTS
07/10	118.89-	ACH Debit
		AT&T Services [ARC] CHECKPAYMT CHECK #: 8582
07/12	999.00+	ACH Credit
		SSA TREAS 310 [PPD] XXSOC SEC
07/24	10.39-	ACH Debit
		NewYorkLife-AARP [PPD] INSURANCE
07/27	104.94-	ACH Debit
		NewYorkLife-AARP [PPD] INSURANCE
07/31	38.51-	ACH Debit
		TDSIVR0000 [TEL] EDI PYMNTS

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STATEMENT PERIOD: 06/20/2023 - 08/10/2023

=====

FREM SMALL BUSINESS

15 08/00 12 CC

-- ELECTRONIC TRANSACTIONS --

DATE	AMOUNT	DESCRIPTION
08/01	78.28-	ACH Debit
		FUNERAL DIRECTOR [PPD] Insurance
08/01	131.00-	ACH Debit
		Kandiyohi Power [PPD] ACH Paymnt
08/03	4.10-	ACH Debit
		BCON800-832-6858 [PPD] AUG INS
08/07	3.60-	ACH Debit
		BLUECROSS BLUESH [WEB] EDI PAYMTS
08/09	999.00+	ACH Credit
		SSA TREAS 310 [PPD] XXSOC SEC

-- CHECKS --

NUMBER	AMOUNT	DATE	NUMBER	AMOUNT	DATE	NUMBER	AMOUNT	DATE
8584	108.50	07/12	8585	773.71	07/19			

-- BALANCE INFORMATION --

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
06/19	2,521.85	07/03	8,137.27	07/27	8,016.24
06/20	10,624.85	07/05	8,133.67	07/31	7,977.73
06/22	10,614.46	07/10	8,014.78	08/01	7,768.45
06/26	8,429.46	07/12	8,906.28	08/03	7,764.35
06/27	8,347.65	07/19	8,131.57	08/07	7,760.75
06/30	8,254.37	07/24	8,121.18	08/09	8,759.75

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Please go to our website to check out your options.

STATEMENT PERIOD: 06/20/2023 - 08/10/2023

SUMMARY:

ACCOUNT	PREVIOUS	TOTAL	TOTAL	SERVICE	ENDING
NUMBER	BALANCE	DEBITS	CREDITS	CHARGE	BALANCE
DDA [REDACTED]	35	18 3,863.10	3 10,101.00	.00	8,759.75